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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MM Docket No. 98-155  
(Table of Allotments) ) RM-9082  
FM Broadcast Stations ) RM-9133  
Alva, Mooreland, Tishomingo, )  
Tuttle, and Woodward, Oklahoma )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

REPLY COMMENTS

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November 3, 1998

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To: Chief, Allocations Branch  
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**REPLY COMMENTS**

Ralph Tyler (hereafter "Tyler"), licensee of FM Broadcast Station KTSH, Tishomingo, Oklahoma, by his attorneys, and pursuant to Section 1.415(c) of the Rules, 47 C.F.R. § 1.415(c), hereby replies to (1) the Response to Order to Show Cause served October 16, 1998 by Classic Communications, Inc. (hereafter "Classic"), licensee of FM Broadcast Station KWFX, Woodward, Oklahoma, (2) the Response to Order to Show Cause filed October 19, 1998 by Chisholm Trail Broadcasting Co., Inc. (hereafter "Chisholm Trail"), licensee of FM Broadcast Station KXLS, Alva, Oklahoma; and (3) the Comments in Support of Notice of Proposed Rule Making and Orders to Show Cause filed October 19, 1998, by FM 92 Broadcasters, Inc. (hereafter "FM 92"), licensee of FM Station KMZE, Woodward, Oklahoma.

## I. Introduction

1. By Notice of Proposed Rule Making and Orders to Show Cause (hereafter "NPRM"), DA 98-1682, released August 28, 1998, the Commission inter alia ordered Classic to show cause why the license of KWFX, Woodward, should not be modified to specify operation on either Channel 228A or Channel 292C1, and ordered Chisholm Trail to show cause why the license of Station KXLS, Alva, should not be modified to specify operation on Channel 260C1, thereby permitting the implementation of Tyler's proposal to relocate KTSH from Tishomingo to Tuttle, Oklahoma.

2. In its Response, Classic does not object to the modification of the KWFX license to specify operation on Channel 292C1 provided it is reimbursed for the reasonable and prudent expenses relating to the "change in power and the change of channel" (Ibid, p. 2). In its Response, Chisholm Trail does not set forth reasons why the public interest would be disserved by the modification of its license to specify operation on Channel 260C1. Rather, Chisholm Trail asserts that Tyler's proposal to change Station KTSH's community of license from Tishomingo to Tuttle would result in the removal of Tishomingo's only local broadcast service and argues that Tyler has failed to demonstrate that his proposal would serve the public interest. In its Comments, FM 92 supports the adoption of Option 2 and inter alia

pledges to reimburse Classic and Chisholm Trail for their channel changes to the extent the Commission requires.

## **II. Classic's Response**

3. Classic presently operates on deleted Channel 228A at Woodward and has pending an upgrade application to specify operation on allotted Channel 260C1. In the NPRM, the Commission alternatively proposed the substitution of Channel 228A or Channel 292C1 at Woodward and requested that Classic state which channel and class it intends to pursue (Ibid, Pars. 11 and 13). The Commission also acknowledged Tyler's stated intention to reimburse Classic, in accordance with Commission policy, for the reasonable and prudent expenses related to the channel change should Tyler's proposal be adopted (Ibid, Par. 11).

4. In its Response, Classic advises that it intends to pursue operation of KWFX as a Class C1 station on Channel 261 "as presently licensed" (Ibid, Par. 1), but does not object to the amendment to the Table of Allotments to specify Channel 292C1 in lieu of Channel 261C1. Classic further does not object to the modification of the KWFX license to specify operation on Channel 292C1 "instead of Channel 261C1 as presently licensed" so long as it is reimbursed for the reasonable and prudent expenses relating to the "change in power and the change of channel" (Ibid, par. 2).

5. The Commission should amend the Table of Allotments to substitute Channel 292C1 for Channel 261C1 at Woodward and modify the KWFX license to specify operation thereon. The Commission should also affirm that Tyler is obliged to reimburse Classic for the reasonable and prudent expenses relating to the change of channel, but not the "change in power" as requested by Classic. Station KWFX presently operates on Channel 228A with Class A facilities. In accordance with Commission policy, Tyler is not obliged to reimburse Classic for expenses relating to the upgrade from Class A to Class C1 status.

### **III. Chisholm Trail's Response**

6. Chisholm Trail's KXLS presently operates on Channel 259C1 at Alva. In the NPRM (Pars. 13, 14), the Commission proposes to substitute first adjacent Channel 259C1 for Channel 260C1 at Alva, and has directed Chisholm Trail to show cause why its license should not be modified to specify operation thereon. As noted above, in its Response Chisholm Trail does not set forth reasons why the public interest would be disserved by the modification of its license to specify operation on Channel 260C1. The reason is plain: KXLS can operate just as efficiently on 99.9 MHZ as on 99.7 MHZ. Importantly, too, Tyler will reimburse Chisholm Trail for its reasonable and prudent expenses incurred in the channel change. Thus, on the face of

it, there does not appear to be any public interest or private reason for Chisholm Trail to pursue its objection to Tyler's proposal.

7. Chisholm Trail asserts first that Tyler's proposal to change KTSH's community of license from Tishomingo to Tuttle should not be adopted because it would deprive Tishomingo of its only local broadcast service (Chisholm Trail's Response, pp. 2-6). Chisholm Trail's argument is an iteration of its earlier assertions in this proceeding (see e.g., Chisholm Trail's Motion to Dismiss filed June 25, 1997). In essence, Chisholm Trail posits that the issuance of a construction permit for non-commercial educational Station KAZC at Tishomingo does not adequately cure the disruption to "existing service" occasioned by removal of an operating station. Chisholm Trail also argues that the residents of Tishomingo are entitled to a "reasonable expectation" that the existing service they currently receive from KTSH will continue and it attaches five letters from local residents purporting to demonstrate that Station KTSH is the only contemporary Christian music station in the Tishomingo area and that it not only serves as a vital sources of local news, weather, sports and informational programming, but also has an important function in local church ministry (Ibid).

8. As reported in Tyler's Comments, the construction of Station KAZC has been completed, program tests have commenced and a license to cover application is on file.<sup>1</sup>/ These developments effectively moot Chisholm's Trail's argument because the removal of KTSH will not deprive Tishomingo of its only local transmission service.

9. Chisholm Trail's arguments concerning KTSH's program service must also fail as a matter of law. It is well established that program decisions are appropriately marketplace driven and committed to the good faith discretion of broadcast licensees. WNCN Listeners Guild v. FCC, 450 U.S. 582 (1981); Committee to Save WEAM v. FCC, 61 RR 2d 1440 (D.C. Cir. 1986). Therefore, the Commission does not and will not base allotment or licensing determinations on program format or service.

10. In any event, Station KAZC has taken over the contemporary Christian program service broadcast by KTSH so that in most respects the very programming lauded in the letters from the Tishomingo Mayor, the Johnston County Chamber President and the Pastors of local churches will be continued on KAZC. In sum, upon KTSH's removal, KAZC will provide Tishomingo with a first local transmission service and may be expected to continue to

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<sup>1</sup>The Commission announced the acceptance of the license to cover application (BLED-981002KA) by Report No. 24350, p. 6, released October 20, 1998.

provide the substantial public interest benefits which KTSH has provided to the Tishomingo community.

11. Chisholm Trail asserts second that even if Station KAZC were to be constructed and commenced operations, it would not constitute a satisfactory replacement for Station KTSH (Chisholm Trail's Response, pp. 7-10). In particular, Chisholm Trail argues that KAZC would not provide a city grade signal to Tishomingo, that KAZC would provide city grade service to only 15% of the population and 26% of the area served by KTSH's city grade contour, and that KACZ would provide primary (60 dBu) service to only 23% of the population and 30% of the area served by KTSH's current primary contour.

12. There is annexed hereto the Engineering Statement of William Brown which undertakes to place in proper perspective the arguments set forth by Chisholm Trail and its engineering consultant. Suffice it to say, as Chisholm Trail itself concedes, as a non-commercial FM station operating on a reserved channel, Station KACZ is not required to provide city grade service to Tishomingo. Moreover, as Chisholm Trail's engineering consultant concedes, Tishomingo is abundantly served by eleven radio stations. Finally, Chisholm Trail has not undertaken to refute Tyler's showing, recounted in the NPRM (Par. 5) that the

entire area presently served by KTSH will continue to receive at least five full-time services.

13. Chisholm Trail argues third that the removal of Station KTSH from Tishomingo does not satisfy the "rare circumstances" exception set forth in the Commission's Change of Community Memorandum Opinion and Order, 5 FCC Rcd. at 7094, 7096 (1990). Without belaboring the point, Chisholm Trail is simply mistaken. The removal of Station KTSH from Tishomingo will not deprive that community of its only local service. Rather, Tishomingo will continue to receive transmission service from Station KAZC. Moreover, Chisholm Trail has taken the "rare circumstances" exception out of context for there can be no doubt that the provision of a first local transmission service to Tuttle, coupled with the replacement of the first transmission service at Tishomingo, materially enhances the mandate under Section 307(b) of the Communications Act and the policy concerns reflected in the Commission's Change of Community Memorandum Opinion and Order.<sup>2</sup>

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<sup>2</sup>Chisholm Trail is mistaken in its assertion that "Tyler was successful in moving Station KKNG (formerly KTLS), Channel 227C1, from Ada to Newcastle, which is approximately 15 miles east of Tuttle." Tyler has no ownership interest in the rule making proponent (Tyler Broadcasting Corporation) in the Newcastle proceeding.

#### IV. FM 92's Comments

14. FM 92 supports Option 2, but requests a change in the Mooreland site restriction from 9.3 kilometers south to a site restriction twenty-nine kilometers southwest of Mooreland, which is reported to be the location of a 1200 foot tower suitable for full Class C1 facilities (FM 92 Comments, Engineering Statement, p. 1). The difficulty with this proposal is that it apparently would not enable Station KWFY to operate with Class C1 facilities without a relocation of its existing transmitter site.<sup>3</sup> Given Classic's express preference to pursue Class C1 facilities, it would appear that Option 1 may be the preferable channel arrangement.

15. If Option 1 is adopted, FM 92 has inter alia pledged to share with Tyler the reasonable and prudent expenses incurred by Classic in its channel change. It asserts, however, that it should not be required to reimburse Chisholm Trail for its channel change assertedly because such change will not benefit FM 92 in any way, citing Cordele, Dawson & Montezuma, Georgia, 8 FCC Rcd. 7672 (1993). Cordele simply affirms that whenever "an existing licensee or permittee is ordered to change frequencies

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<sup>3</sup>It would apparently however, enable KWFY to operate on Channel 228 from its existing site with Class A, C3, or C2 facilities (Ibid.).

to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred." FM 92's proposed allotment is interrelated with Tyler's proposed reallocation and it will benefit from the adoption of either Options 1 or 2. FM 92 appears to acknowledge as much in pledging to reimburse Chisholm Trail for its reasonable and prudent expenses related to Chisholm Trail's channel change "to whatever extent the Commission requires."

#### **V. Conclusion and Summary of Argument**

16. Tyler has demonstrated that there are no public interest detriments to the substitution of Channel 292C1 for Channel 261C1 at Woodward and the substitution of Channel 260C1 for Channel 259C1 at Alva. Tyler has also expressed its willingness to reimburse Classic and Chisholm Trail for the reasonable and prudent expenses incurred by them for these channel changes.

17. Tyler has also demonstrated that the removal of KTSH from Tishomingo will not deprive that community of its sole local transmission service. On the contrary, Tishomingo will continue to receive a local transmission service and contemporary Christian programming from Station KAZC. Tyler has also demonstrated that the area and population presently served by

KTSH will continue to receive service from five full-time radio stations.

18. Finally, the reallocation of Channel 259C1 from Tishomingo to Tuttle will provide Tuttle (1990 population - 2,807) with a first local transmission service. Station KTSH will also increase its service from 36,134 persons to a total of 767,353 persons, for a net gain of 731,219 persons (NPRM, Par. 5). These substantial public interest benefits impel favorable action on Tyler's proposal.

Respectfully submitted,

RALPH TYLER

By:

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November 3, 1998

**REPLY TO COMMENTS  
NOTICE OF PROPOSED RULEMAKING  
MM Docket 98-155, RM-9082, RM-9133  
Ralph Tyler  
Tuttle, Oklahoma  
November 1998**

This Technical Response supports the Reply Comments by Ralph Tyler ("Tyler") in reply to the Response filed by Chisholm Trail Broadcasting Co., Inc. ("CTB") in MM Docket No. 98-155, RM-9082 and RM-9133.

The Tyler proposal will provide the first local service to Tuttle as was stated in the Proposed Rulemaking. Tuttle is an independent community. Tuttle is located in Grady County. Grady County is not inside the Oklahoma City Metropolitan Area per US Census Map attached as Exhibit #1. Tuttle is also not located inside of the Oklahoma City Urbanized Area (See Exhibit #2). The South Canadian River provides a natural barrier between Tuttle and Oklahoma City. There is no direct crossing of the River between Tuttle and Oklahoma City (See Exhibit #3). There are only two crossings of the river. One must travel SR 37 eleven miles east to an intersection with Interstate 44 before crossing the river. Once the river is crossed on I-44 it is another 15 miles to downtown Oklahoma City. The only other crossing of the river is 8 miles west to US Highway 81. At this intersection it is then 15 miles north to El Reno, Oklahoma which is 34 miles west of Oklahoma City.

CTB states that KAZC could not move closer to Tishomingo due to a potential short spacing with adjacent Channel 201C1 licensed to KNTU in Denton, Texas. They supplied a tabulated study of Channel 202A at the KAZC site. It appears this study assumed channel spacing under Section 73.207. All FM stations operating in the

reserved band (Channels 200-220) must utilize the allocation provisions of Section 73.509 of the Commission's Rules. Apparently CTB did not take into consideration these contour to contour spacing requirements of Section 73.509. Reserved Band non-commercial FM stations (*other than Channels 218, 219, 220 and "IF" considerations*) do not fall under the spacing requirements of Section 73.207.

In the original KAZC application for a construction permit a complete non-commercial allocation study was provided. This study clearly shows the KAZC transmitter site could be located in downtown Tishomingo. KAZC chose to locate on an existing transmission tower to avoid the need for a new site and the cost of building a new tower.

KAZC can locate in downtown Tishomingo as a Class A or Class C3 facility. See Class C3 allocation study as Exhibit #4.

CTB states that the present KAZC facilities do not provide a 3.16 mV/m contour over the city of license. However, there is no requirement in the non-commercial rules that require a station operating in the reserved band to provide a "city grade" signal over its community of license. The actual KAZC signal in Tishomingo is described as excellent.

In summary, the CTB response suffers from the wrong technical assumptions. Not only can Channel 202 locate in Tishomingo proper but it can upgrade to a Class C3 facility. CTB claims no city grade coverage of the community of license. There is no requirement for such coverage. The proof is in the reality of an excellent signal in Tishomingo from the new KAZC facilities.

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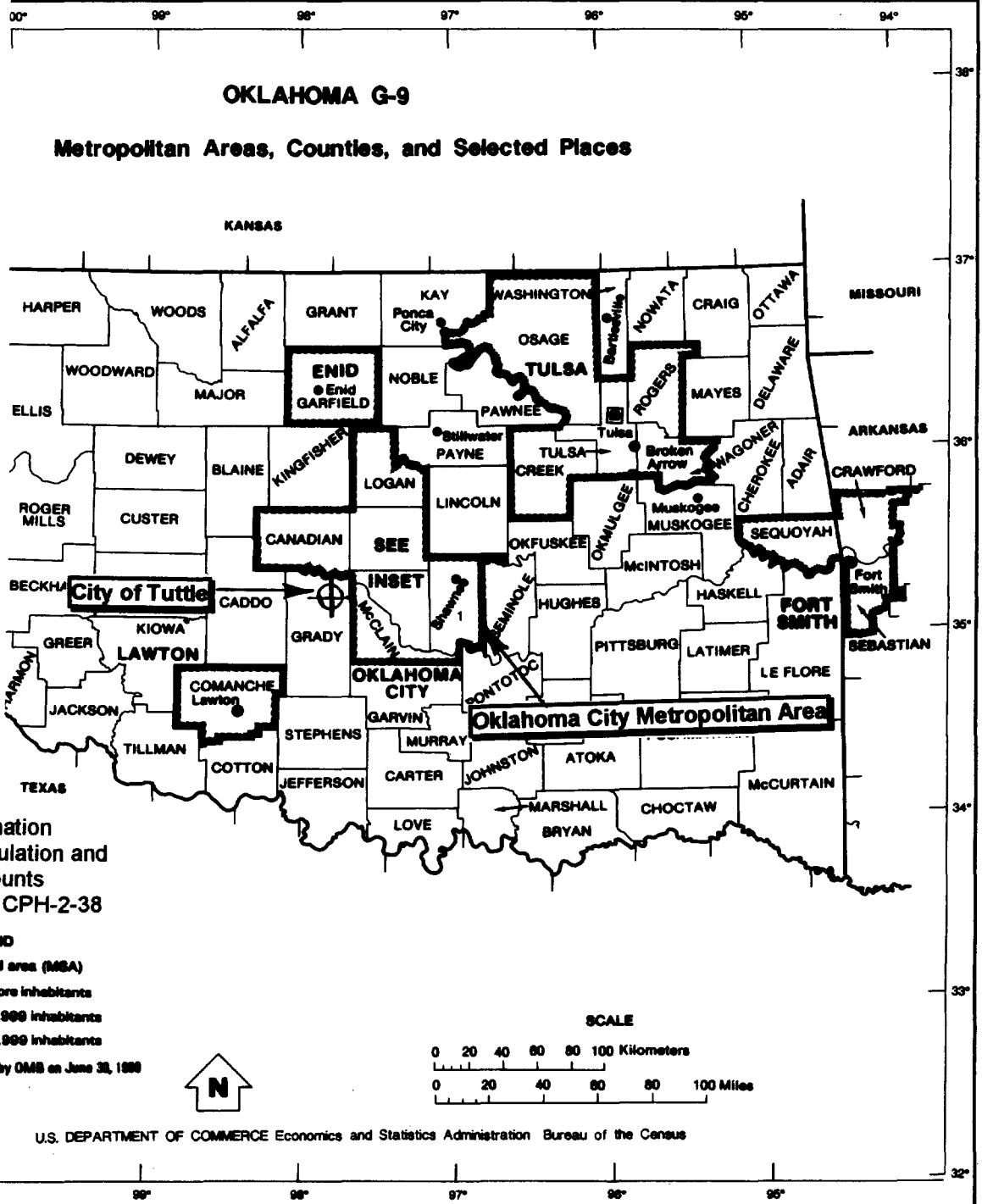
CTB wrongfully states that Tuttle's city boundaries are contiguous with the metropolitan area of Oklahoma City but a major river separates the communities with only limited crossing access. Tuttle is not in the Oklahoma City Metropolitan or Urbanized Areas. Tyler has never claimed that "white" or "gray" areas would be either lost or gained by his proposal.

This proposal gives Tuttle, Oklahoma, an independent incorporated community, its first broadcast station. It does not deny Tishomingo of local service since KAZC is currently providing service to that community.

**Bromo Communications, Inc.**

A handwritten signature in black ink, reading "William G. Brown". The signature is written in a cursive, flowing style with a large initial "W".

William G. Brown



## Tuttle & OKC Metropolitan Area

Note:

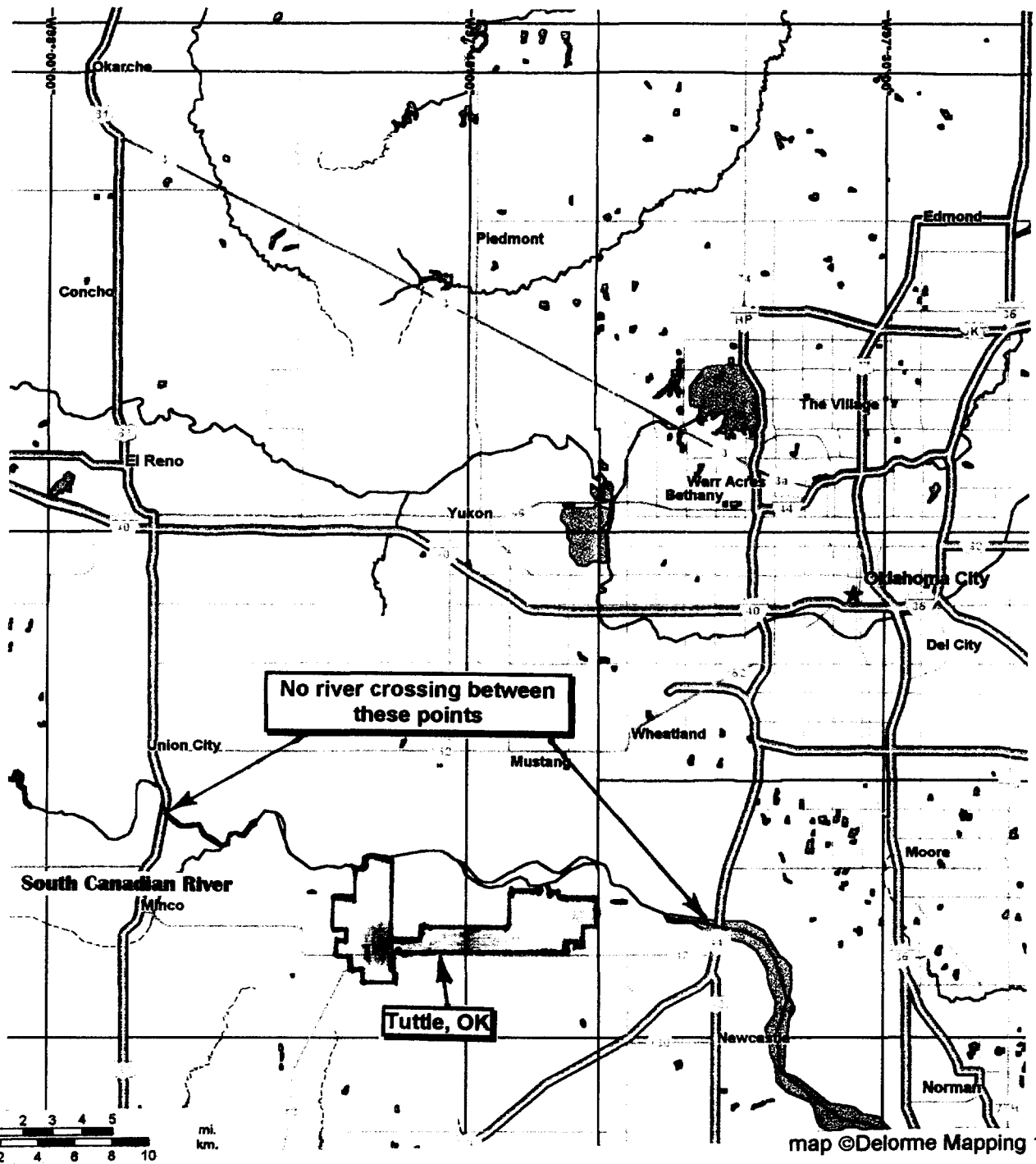
Tuttle is located in Grady County  
Grady County is outside of the  
Oklahoma City Metropolitan Area.

**Exhibit #1**  
**REPLY TO COMMENTS**  
**Docket No. 98-155**  
**Ralph Tyler**  
**Tuttle, Oklahoma**  
**November 1998**

**BROMO**  
**COMMUNICATIONS**

BROADCAST  
TECHNICAL CONSULTANTS





## Area Highway Map

**Exhibit #3**  
**REPLY TO COMMENTS**  
**Docket No. 98-155**  
**Ralph Tyler**  
**Tuttle, Oklahoma**  
**November 1998**

**BROMO** BROADCAST  
TECHNICAL CONSULTANTS  
**COMMUNICATIONS**

Searching at Proposed Site  
Tishomingo Oklahoma

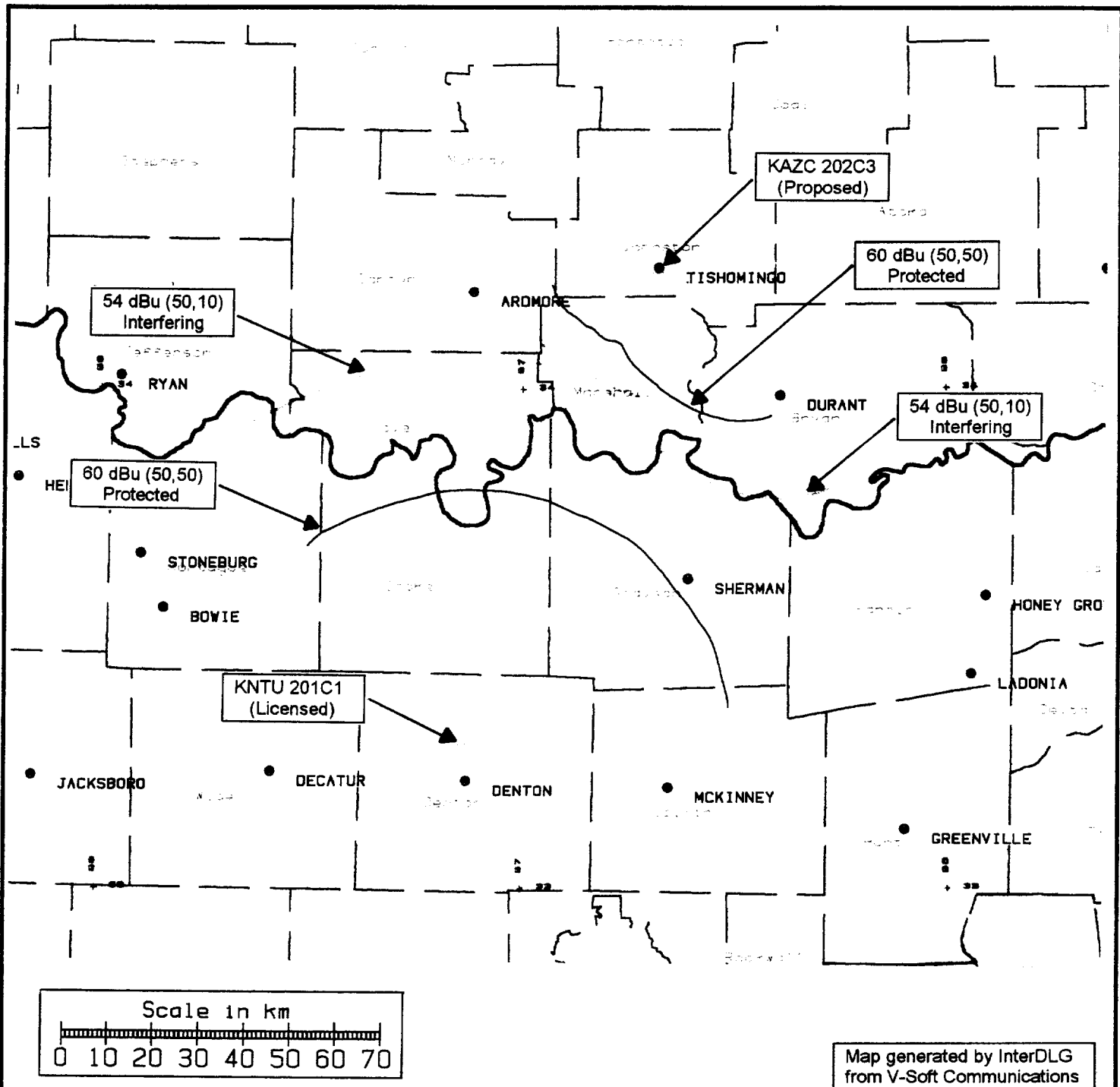
REFERENCE		CLASS C3	DISPLAY DATES
34 14 00 N			DATA 10-24-98
96 41 00 W		Current rules spacings	SEARCH 10-30-98
----- CHANNEL 202 - 88.3 MHz -----			

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT
KAZC.C	202A	Tishomingo	OK	39.2
CP CN	34 21 34	96 33 34	1.750 kW	100M
		South Central Oklahoma Christ	BPED970127MD	990414
KNTU	201C1	Denton	TX	201.9
LI DCN	33 17 24	97 08 11	100.000 kW	135M
		University of North Texas	BMLED920107KG	
AP204	204C3	Ardmore	OK	265.5
AP EN	34 12 10	97 09 12	25.000 kW	65M
		Cameron University	BPED960118MJ	960619
AP204	204C2	Ada	OK	8.3
AP CN	34 46 32	96 35 15	31.000 kW	73M
		American Family Association	BPED960404MB	980123
		>Amended 961203		
KMSI	201C2	Moore	OK	322.3
LI VN	35 12 07	97 35 18	30.000 kW	182M
		Creative Educational Media.,	BLED921104KA	
		>Vertical Polarization Only		
KEOM	203C1	Mesquite	TX	178.4
LI DCN	32 45 45	96 38 04	61.000 kW	175M
		Mesquite Independent School D	BLED920113KB	

**TABULATED ALLOCATION STUDY**

**Exhibit #4**  
**REPLY TO COMMENTS**  
**Docket No. 98-155**  
**Ralph Tyler**  
**Tuttle, Oklahoma**  
**November 1998**

**BROMO** BROADCAST  
COMMUNICATIONS TECHNICAL CONSULTANTS



## KNTU INTERFERENCE STUDY

Proposed KACZ Site:  
 34° 14' 00" North Latitude  
 96° 41' 00" West Longitude

KACZ (Proposed) assumes class C3 directional maximum facility.

**Exhibit #4A**  
**REPLY TO COMMENTS**  
**Docket No. 98-155**  
**Ralph Tyler**  
**Tuttle, Oklahoma**  
**November 1998**

**BROMO** BROADCAST  
 TECHNICAL CONSULTANTS  
**COMMUNICATIONS**



**CERTIFICATE OF SERVICE**

I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on the 3rd day of November, 1998, copies of the foregoing Comments of Ralph Tyler were sent via First Class Mail, postage prepaid, to the following:

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 565  
Washington, D.C. 20554

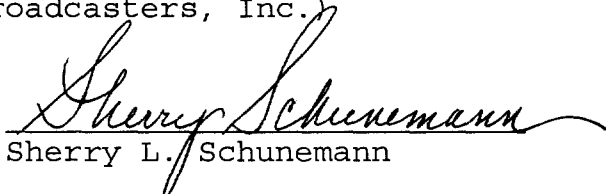
Ms. Leslie K. Shapiro\*  
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\*By hand

  
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